

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

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| ADJUSTMENT OF RATES |) | |
| GENERAL TELEPHONE COMPANY |) | CASE NO. 8045 |
| OF KENTUCKY |) | |

ORDER

In the above-captioned rate proceeding currently before this Commission, the issue of the confidential status of certain of General Telephone Company's tariffs for competitive services has again risen. In Case No. 6495 the Commission ruled on March 16, 1976, that it would treat as confidential those cost of service studies required pursuant to our regulations 1/ that were certified by General Telephone as containing "trade or business secrets or confidential commercial information * * *."

In the instant proceeding, the Attorney General's Division of Consumer Intervention, a party hereto, has requested the right to examine certain tariff information that is on file with the Commission under this confidential status. The Attorney General proposes to use the information in preparation of both cross-examination and direct testimony in the upcoming hearings. To assist the Commission in making a proper determination in this matter, we have requested by letter dated February 23, 1981, that both the Attorney General and General Telephone submit memoranda addressing the following specific questions:

(1) Whether the Commission may disclose or whether the Commission is compelled to disclose to intervenors information and data heretofore submitted as CONFIDENTIAL by General Telephone Company; and

(2) Whether the Attorney General has a special standing among intervenors with respect to receiving information submitted as CONFIDENTIAL.

1/807 KAR 5:011E, Section 5(c).

The requested memoranda were received on March 2, 1981, and after consideration thereof, and being advised, the Commission is of the opinion and finds as follows:

1. For the purposes of clarity in this Order, we shall first address the issue of whether or not the Attorney General has a special standing as an intervenor in this proceeding. KRS 367.150(8)(b) clearly gives the Attorney General the statutory right to be made a party to any proceeding before this Commission, as opposed to the general requirement that all other persons or entities must specifically petition the Commission for leave to be made a party. However, once the Attorney General becomes a party by statutory right, he has only those rights that any other party to the proceeding would have. This was specified by the legislature in KRS 367.160, which states in relevant part as follows:

The persons designated by the attorney general as utility consumer intervenors shall have the same access to material evidence and information of the public service commission relating to any case before it as other parties to the case. (Emphasis supplied).

We must therefore conclude that the Attorney General has no "special standing" in relation to all other parties in this case and must, accordingly, be treated the same as these other parties even with regard to issues involving access to confidential information

2. We turn now to the issue of whether the Attorney General as a party to this proceeding has a right to examine the confidential data for the purposes of cross examination and/or direct testimony in this case.

On March 20, 1980, the Franklin Circuit Court issued an order arising out of the various appeals of the Commission's original decision in 1976 to accord confidential status to this type of cost data. In affirming the Commission's decision on this point, the Court stated as follows:

Reasoning that such financial data fall within the category of "trade secrets" entitled to protection from potential competition, the Commission so held and extended to the applicants' cost of service studies a screen of confidentiality from unfair competitive scrutiny. In so doing the Commission acted reasonably and in accordance with law. (Emphasis supplied). 2/

Thus the answer to the first question that the parties were required to address, is clearly that the Commission is not compelled to disclose the information submitted as confidential by General Telephone. However, this ruling of the Franklin Circuit Court (and all other case law on this subject) accords this Commission the discretion to determine what information submitted to it by a regulated utility will or will not be treated as "confidential." Moreover, even if the Commission accepts certain tariff information on a confidential basis, it still has the discretion to allow access to the information under procedures specified by the Commission. 3/

The Attorney General is clearly not a "competitor" of General Telephone in providing the services authorized under the tariffs that have heretofore been accorded confidential status. The Attorney General has not shown, however, that allowing the inspection of such information even by a non-competitor for the purposes of cross-examination and/or direct testimony in a public hearing, would not result in the disclosure of the information to a competitor of General Telephone. Placing the Company in a competitive disadvantage in the marketing of certain specialized services would not be in the best interests of General Telephone and the customers it serves. Accordingly, we are of the opinion that the Attorney General's request to examine the confidential tariff information should be denied. However, this Commission hereby serves notice on

2/Interconnect Telecommunications Systems, Inc. v. Public Service Commission, et al., Franklin Circuit Court Nos. 86946, 87419, 87420 and 88038, March 20, 1980.

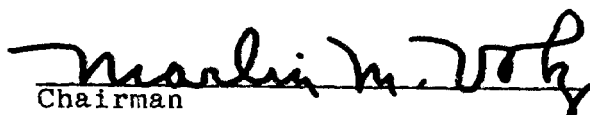
3/See Case No. 7669 (General Telephone Co.), Order issued March 12, 1980.

General Telephone (and any similarly-situated utilities) that in all future proceedings wherein this issue is raised, all cost studies shall be part of the public record unless the utility proves to the satisfaction of the Commission, by affidavit or otherwise, that the studies contain trade or business-secrets, confidential commercial data or other similar information, the disclosure of which would cause substantial injury and unfairness to the utility. A simple certification that the studies contain such information will no longer be sufficient justification for confidential treatment. Indeed, the Commission may, at its discretion, require the utility to prove both the confidential nature of the information and the harm that would result from its public disclosure, through a special hearing.

Based on the above-stated findings, the Commission hereby ORDERS that the request of the Attorney General's Division of Consumer Intervention (specifically, Interrogatory No. 2 and Request No. 10) to examine certain tariff information that has been accorded confidential status, be, and it hereby is, denied.

Done this 9th day of March, 1981, at Frankfort, Kentucky.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary